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THE ROLE OF THE US NAVY IN DOMESTIC LAW ENFORCEMENT(U)
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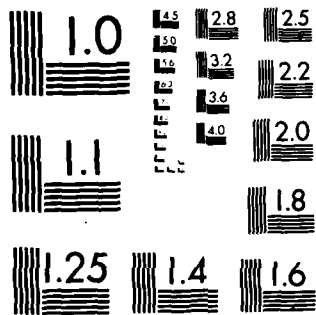
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NAVAL WAR COLLEGE
Newport, R.I.

THE ROLE OF THE U.S. NAVY IN DOMESTIC LAW ENFORCEMENT

by

Michael R. Adams

LCDR, USCG

A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Naval Operations Department.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College, the Department of the Navy or the United States Coast Guard.

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5 March 1984

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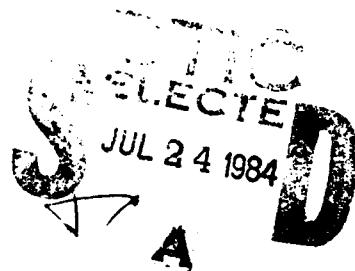
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by Michael R. Adams, LCDR, USCG

KEY WORDS

DRUG ENFORCEMENT
DOMESTIC LAW ENFORCEMENT
POSSE COMITATUS ACT
U.S. COAST GUARD LAW ENFORCEMENT TEAMS (TACLET)
DRUG TRAFFIC
SEARCH/SEIZURE OF SHIPS
BOARDING LAWS
USE OF FORCE
PL 97-86
10 USC 371-78

Abstract of

THE ROLE OF THE U.S. NAVY IN DOMESTIC LAW ENFORCEMENT

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Notes
for

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CHAPTER I

INTRODUCTION

The early 1980s have been witness to what can best be described as a genuine role reversal as the United States Navy finds itself in the peculiar position of serving as an assistant to her smaller sister service, the Coast Guard. This situation has come about as the Navy, along with the rest of the armed forces in the Department of Defense, has been directed to assist in the national effort at eliminating drug smuggling into the United States. Not surprisingly most of the Navy support has gone to the Coast Guard whereas other services (Army, Air Force) have found themselves aiding U.S. Customs, Drug Enforcement Administration, and other civilian law enforcement agencies.

The Navy's resources have always (at least in modern history) exceeded those of the Coast Guard. This equipment and manpower has not been employed for law enforcement for one primary reason and a number of collateral reasons. The primary inhibitor has been legal: the Posse Comitatus Act, which specifically prohibited the use of the Army in law enforcement and was implicitly accepted as prohibiting the use of any federal armed force to engage in any type of law enforcement activity.

The 1981 amendment to that act combined with the stated intentions of the Reagan Administration to use any and all means at its disposal to stop the flow of illegal drugs into

the country have, for the time being, washed away that inhibitor.

The collateral restrictions have been less well-defined, but are simultaneously of no less significance. They revolve around the regrettable but nonetheless extant mis-understanding and non-understanding of federal and international law by many of today's Navy officers. It is the purpose of this paper first to examine the Posse Comitatus act from a historical and current standpoint, provide general guidance to Navy officers who may find themselves actively involved in law enforcement activities with their fellow naval (i.e. Coast Guard) officers, and finally to enumerate some specific guidance to and requirements of the Navy in its new-found role.

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CHAPTER II

HISTORY OF THE POSSE COMITATUS ACT

The Posse Comitatus Act was first enacted in 1878 as part of a flurry of legislation designed to end the disastrous consequences of the imposition of military rule in the South following the Civil War.¹ The decade after the war had been one in which the South was still treated primarily as a group of recalcitrant children, unwilling and unable to "properly" conduct a government of their own. States in the South were deprived of their rights to have congressmen or form their own state legislatures and were simply treated as the vanquished rather than being rejuvenated to become full members of the union for which the war had ostensibly been waged. Martial law was the way of life in the South for years. "Army generals took over command of the five military districts into which the South had been divided, and with an army of occupation at their disposal assumed full responsibility for maintaining law and order."²

Many of the Southern states had done little to encourage confidence in their ability to exercise self-rule. Freedom and franchisement for blacks were more word than fact in the South and the absence of force at polling sites had often resulted in elections peculiarly slewed in favor of conservative white candidates despite a preponderance of black voters. "It was clear from the very first that if such military support

were withdrawn, every state regime based on the Negro vote would be overthrown."³

The Ku Klux Klan reared its ugly head for the first time in this era, further infuriating the self-righteous reformers of the North and speeding passage of the thirteenth, fourteenth, and fifteenth amendments to the Constitution.

The situation was likely not eased by the presence of General Grant in the White House, an indirect indication to the South that the man who had defeated them militarily would now rule over them domestically. Grant had been compelled for many of the above listed reasons to employ federal troops on numerous occasions in order to keep the peace and enforce the law throughout the South. Louisiana in particular had become a sore point, requiring federal troops to seize and hold the statehouse at one point.⁴

Domestic strife was not restricted to the prostrate South. The industrialized North had also become a cauldron of turmoil in the seventies. Particularly in 1877 railroad strikes (resulting principally from cuts in wages) had torn at the very fabric of society, resulting in deaths, arson, destruction of railway and associated property and general chaos. Here again federal troops had to be called out to restore order. "President Hayes dispatched United States troops to Pennsylvania, Maryland, and West Virginia."⁵

Grant, along with others, had begun to realize that dependence on military might to insure domestic tranquility was

a road to ruin. By the end of his term in office in 1876 Grant had grown ever more reluctant to deploy troops for law enforcement. He was willing to accept some non-compliance with the law in exchange for genuine restoration to social normalcy in the Union.

While laws were passed to permit the President to call out the armed forces for the quelling of civil disturbance, legislation concerning the presence of military personnel at polling places continued to be hotly debated as did the use of federal troops for local and federal law enforcement. Upon Grant's departure from the White House, his successor Hayes "registered his opposition to the unwarranted use of force at the polls."⁷

It is from this chaotic period of history that the Posse Comitatus Act emerged in 1878. Its basic provisions were designed to prohibit the abuse of employing military personnel to enforce the laws. Whereas it had been the practice to call out the Army any time a domestic situation got out of hand, the Posse Comitatus Act specifically prohibited the use of Army troops to enforce the law as a matter of routine. As domestic tranquility returned to America and the existence of a standing army was accepted, the Posse Comitatus Act seemed prudent and reasonable. It provided greater limitation on the use of the military, a use which was viewed as a potential threat in a nation where civilian control over (and thus limitation of) the military was considered to be basic.

In fact the Act was renewed in 1976 and when re-written

included the Air Force as well as the Army in its specifications. Interestingly the Act never made mention of the Navy and Marine Corps. The reasoning for the exclusion of naval forces remains uncertain but the apparent intent of the Act was always to prohibit the use of military forces of any kind in civilian law enforcement. The implication, therefore, was that the restriction applied to naval forces.

The Navy even went so far as to officially recognize the implicit applicability of the Posse Comitatus Act to itself in a Secretary of the Navy Instruction (SECNAVINST 5820.7) of 1974 but with the caveat that the act did not apply specifically to the Navy. 8,9

There was a notable exception to this Secretary of the Navy Instruction which allowed the use of Navy forces in civilian law enforcement action with the approval of the Secretary of the Navy. It is noteworthy, however, that the guiding principle of civilian control over the military remained paramount (i.e. the Secretary of the Navy, a civilian official, had to authorize any such use).

The Reagan Administration entered office in early 1981 with a get-tough policy in regards to drug law enforcement. Since 1973 the Coast Guard had been battling the maritime drug smuggling problem with minimum success; no one estimated that the Coast Guard was seizing more than 25 to 30% of the seaborne marijuana (and lesser quantities of more potent drugs such as cocaine and heroin) being smuggled into the country and

pragmatists argued that the amounts seized were closer to 10% of the total.

It appeared that these figures could be improved substantially if the Coast Guard could get some help. It was publicly acknowledged by 1980-81 that the Coast Guard was in dire straits with out-of-date equipment, insufficient personnel, and inadequate resources.¹⁰ The obvious, but apparently prohibited, solution was to use the Navy to augment the Coast Guard's forces.

Increased national awareness of drug smuggling and the problem of drug abuse in America mobilized congressional support for the President's initiatives and the Vice-President's South Florida Drug Task Force. The result was that in December of 1981 the Military Appropriations Act (PL 97-86) passed by the Congress and signed into law by the President included a proviso (later to become 10 USC 371-78) which allows "the Secretary of Defense (to) . . . provide to Federal, State, or local civilian law enforcement officials any information collected. . . (and) make available any equipment, base facility, or research facility. . . to any. . . law enforcement official. . . ." ¹¹

Although these provisions ostensibly had no direct impact on Navy assistance (keeping in mind the aforementioned lack of restriction in the Posse Comitatus Act and the Secretary of the Navy Instruction) they certainly conveyed the intent of congress and removed any lingering doubts about the propriety of using Navy resources to assist the Coast Guard.¹² It should be noted that the Coast Guard, being an armed force of the United States,

cannot properly be labeled "civilian law enforcement", but is still considered to fall under these provisions.

Subsequent to passage of PL 97-86 the Department of Defense issued a new directive (DOD Directive 5525.5 of 22 March 1982) spelling out exactly what the requirements are for employment of Department of Defense resources in law enforcement activity. Among other provisions, that directive calls for the Secretary of Defense to give prior approval for participation of Navy and Marine Corps personnel in the interdiction of vessels or aircraft involved in illegal activity. As a result the Secretary of the Navy sent to the Secretary of Defense in July of 1982 a memorandum requesting rather broad authority to support the Coast Guard in law enforcement activity including surveillance, logistics, and the embarkation of Coast Guard detachments aboard Navy ships for law enforcement purposes.¹³ On 9 August 1982 Secretary Weinberger approved the request specifically authorizing Navy support in four areas: (1) air and surface surveillance; (2) towing/escort of seized vessels and transportation of prisoners; (3) logistics support to Coast Guard units and (4) embarkation of Coast Guard personnel to conduct law enforcement boardings of United States flag and stateless vessels.¹⁴ Thus we are brought to an examination of how the Navy is expected to provide this support.

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CHAPTER III

NAVY ACTIVITIES AND COMMITMENTS

Three of the four duties assigned to the Navy in support of Coast Guard law enforcement operations are relatively straightforward. Logistics support means just that: supplying of fuel, provisions, and other such routine supplies on a not-to-interfere basis with normal Navy operations. A large number of Coast Guard surface units are short-legged (most Coast Guard vessels are less than 100 feet in length and have durations better measured in hours than days) and such support can be essential when these units are sent on long-range law enforcement missions.

Air and surface surveillance is not new with the 1982 directives. In fact even before PL 97-86 the Coast Guard was seeking information from Navy sources. The fact is that the wide-ranging activities of Navy surface and air units result in their observing substantial ocean areas in the course of normal operations. There is not, and in fact never was, anything in the Posse Comitatus Act which prohibited Navy units from passing along sighting information on suspicious vessels to the Coast Guard any more than the private citizen was so prohibited. The revision in the statute, however, combined with new Navy and Secretary of Defense directives as well as the increased "visibility" of Navy assistance to the Coast Guard makes this program not more important, but more extensive.

In particular air surveillance support has increased. That

support is usually well-directed and specifically controlled and needs no additional examination or amplification here except to note its existence and expansion.

Towing and escort of seized vessels and transportation of prisoners and/or contraband is the first of the areas which begins to involve Navy units directly in the law enforcement chain. It is generally accepted as Coast Guard policy (though not necessarily mandated throughout the service) that the officer responsible for seizing a vessel and arresting the crew will maintain custody of vessel, crew and contraband until such time as all are turned over to appropriate shoreside authorities. (Customs, DEA, Immigration and Naturalization Service). So long as that officer remains with his "catch" there is no problem with such legal niceties as "chain of custody", and simple experience and common sense will usually dictate that at least one Coast Guard officer/petty officer escort any vessel or prisoners being delivered. In fact, CINCLANTFLT OPORD 2120 (which addresses Navy assistance to the Coast Guard in detail) specifically states that such Coast Guard accompaniment will occur.¹⁵

It should be noted that seized vessels and arrested crews normally must be taken to the nearest United States port at which they can be arraigned by a United States magistrate. This may take a Navy ship into unfamiliar ports. In addition smuggling ships are notorious for being ill-equipped and in disrepair so the Navy commanding officer involved in such

activity would be well-advised to be prepared to render engineering and damage control assistance to any seized vessel.

Prisoners can be a problem for a ship not equipped with a brig. Generally Coast Guard ships do little more with prisoners than literally chain them up in some sheltered deck location and provide them with minimum bedding and sufficient food and water for the duration of the voyage. To date no Coast Guard officer has been successfully accused of maltreatment of prisoners using such techniques.

Finally Navy surface ship officers must be prepared to have Coast Guard Tactical Law Enforcement Teams (TACLETS) embarked aboard and working from their ships. These TACLETS have been operating for about a year with some success. (There have been at least two seizures effected by TACLETS working from Navy ships.)

Before examining exactly what procedures a Navy ship will have to follow should a TACLET be embarked and a law enforcement situation develop, an understanding of what the TACLET does is required.

To date the TACLETS have consisted of two officers and two petty officers, all with appropriate Coast Guard law enforcement training. These individuals will deploy aboard Navy ships bound for high drug trafficking areas (Yucatan Channel, Windward Passage) for limited periods of time (approximately 30 days). Once aboard, the senior TACLET officer will brief the commanding officer and appropriate additional personnel on what the TACLET does and how it does it.¹⁶ It need only be noted here that both

Coast Guard officers and petty officers are empowered to board vessels of the United States and conduct examinations to insure compliance with all federal laws. This is an extremely broad-ranging power and one that has been challenged in the past. Nonetheless it stands and it is the scope of this authority to board and inspect which yields to the Coast Guard officer/petty officer his ability to carry out his duties.

One item in the Secretary of Defense's letter to the Secretary of the Navy concerning employment of Coast Guard TACLETs needs emphasis: the TACLETs will be used only to enforce law against United States flag vessels and stateless vessels.¹⁷ The Coast Guard has, and likely will continue to enforce law against foreign flag vessels, but only with the concurrence of the nation under whose flag the ship operates.¹⁸ There is apparently, and understandably, a reluctance on the part of the federal government to have United States Navy warships engaged in law enforcement action against foreign flag private or commercial vessels. Regardless, the possibility of Navy involvement in such activity does exist.

As already noted Coast Guard officers/petty officers have wide-ranging authority over United States flag vessels. A Coast Guardsman merely has to direct a United States vessel to prepare for a boarding and the procedure (boarding, examination, inspection) begins.

What of a stateless or foreign flag vessel, however? The first thing which must be understood is the status of a stateless

vessel under international law. A vessel which is stateless is not immune from law, but rather lacks the immunity (or more correctly lacks the rights which belong to a vessel) of a state. A stateless vessel, in other words, forfeits her rights.¹⁹ The first vessel willing and able to enforce law against a stateless vessel may do so.²⁰

Technically a Navy commanding officer has the authority, under international law, to stop a stateless vessel on the high seas and take it to a United States port. The problem, however, rests in determining statelessness without stopping or boarding a vessel which is legitimately registered under a foreign flag and thus violating international law.

Determining statelessness is more a project of eliminating nationality than it is one of proving lack of nationality. Most legitimate vessels will display something to indicate nationality: a homeport painted on the stern, for instance, or most commonly and most generally accepted, a national flag. Obviously flags can be purchased by anyone and the flag alone does not prove nationality, but display of a flag indicates nationality, an indicator which must be displayed before a vessel can be designated as stateless.²¹

Lack of a flag, homeport, or any other external indicators still does not prove statelessness. Should the master or any other person on board claim a nationality for the vessel, that nationality is assumed correct until disproven. Normal Coast Guard procedure in such an instance, in which nationality is

claimed but nothing shown to substantiate it, is to have the claim verified by the claimed country, a procedure which may involve days of waiting for confirmation or denial.²²

Contrariwise conflicting information may lead to a suspicion of statelessness. For instance a vessel showing a home-port of Cartegena but flying a Panamanian flag while the master claims the vessel is Honduran could be strong indicators of statelessness. Normal Coast Guard procedure in such a case is to go aboard the vessel (after consultation with the claimed state) in order to accurately determine nationality through registration/documentation papers.²³ More delicate handling may be required if the boarding is to be done by a TACLET operating from a Navy ship.

When a Coast Guard person operating from his own ship or a Navy ship determines a vessel to be stateless he is free to enforce United States law aboard that stateless vessel by virtue of the fact that, under international law, no other protection evolves to a stateless ship. "No state is then prevented by an international legal provision from extending its authority over the ship. . ."²⁴

This premise, the right of a Coast Guard boarding officer to enforce United States law aboard a stateless vessel, has already been challenged and upheld in federal court. In fact the challenge arose from a case in which a TACLET had conducted a boarding and seizure from a Navy ship near Puerto Rico.²⁵

The net result of all the foregoing is this: a vessel must

normally be presumed to be of a state until it can either be proven (usually through the nation in question) that it has no state or sufficient, solid indication leads to the suspicion that statelessness exists therefore requiring substantiation to prove or disprove the vessel's nationality. Finally, if statelessness is proven then the vessel comes under the law of the United States or any other nation which is willing and able to enforce such law.²⁶ As noted above if statelessness is ascertained the Navy alone does have authority under international law to take the stateless vessel into a United States port. However it is most likely, as will be seen, that a Navy ship engaged in law enforcement activity will already be under the tactical control of a Coast Guard District Commander who will direct the action to be taken.

Let us assume, then, that a Navy ship with an embarked TACLET has come upon a United States flag, foreign flag, or stateless vessel and that the TACLET suspects the vessel is engaged in illegal activity (refusal to stop for boarding, evasive answers, odor of marijuana from vessel, etc.). What can and should the Navy ship do to make the vessel comply with an order to heave to and be boarded?

CINCLANTFLT OPORD 2120 is specific about the action to be taken in such a situation: the Navy ship will change its tactical control to the local Coast Guard District Commander who exercises jurisdiction over the case.²⁷ If the vessel is United States

flag or statelessness is determined to exist the Navy ship will be expected to take every action short of the actual use of force and firing of weapons to get the vessel to comply.²⁸ Exercising of weapons, close aboard maneuvering, training of fire hoses down funnels, and attempts to foul screws are all techniques which can and have been used to compel compliance.

These methods can also be used against a foreign flag vessel if authorized by the foreign state. Any escalated action against a foreign flag vessel (warning shots, disabling fire) will also require approval in advance from the nation in question. As noted above, it appears unlikely that Navy ships will become involved with foreign flag vessels, but if so the following guidelines for dealing with stateless and U.S. flag vessels will generally apply with the understanding that the flag state must give prior approval ~~before~~ the undertaking of any force.

If non-use of force actions fail, the Navy commanding officer will request permission to fire warning shots from the Coast Guard District Commander.²⁹ This authorization, it must be borne in mind, is a graduated, limited response. Authority to use warning shots is only that: should warning shots fail, additional clearance is required before any further escalated attempts to stop the vessel are undertaken.

Warning shots are recognized under international law as a direction to halt one's vessel. They are not intended to harm either vessel or crew but only to make it clear that the vessel must stop. Warning shots should be visible: they should be noisy, make big splashes, use tracer ammunition at

night, and make it completely clear to the vessel being halted that such shots are being fired.

The rule of self-defense always applies during law enforcement activities. It must be borne in mind, however, that self-defense dictates the use of only that force necessary to protect oneself and one's ship; a commanding officer should not, in other words, use weapons to avoid a ramming if simple maneuvering alone will suffice.

If warning shots fail, the commanding officer must next ask for permission to use disabling fire, but only after warning shots have clearly failed to induce compliance.³⁰ Here again we are discussing an escalated response. The intent is to disable the vessel, not destroy it or harm the crew. Normally disabling fire is worked from aft of the vessel being fired on to slowly forward, endeavoring to strike the screw(s) and/or rudder(s) of the vessel. Only when these efforts clearly fail should fire be directed into the hull of the vessel itself in an attempt to disrupt/destroy machinery.

The Navy has in fact gone through this entire procedure at least once. In July of 1983 U.S.S. Kidd with a TACLET embarked encountered a converted fishing vessel named Ranger. Though the vessel claimed Honduran registry and showed a Honduran homeport, Honduras denied the ship's claim to nationality. Kidd then ordered the vessel to stop so that the TACLET could board the vessel. When Ranger refused, Kidd, already having shifted her tactical control to Commander, Seventh Coast Guard

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District cycled her deck weapons and missile launchers in view of Ranger. After receiving permission from the District Commander, Kidd next fired numerous .50 caliber machine gun warning shots across Ranger's bow. Ranger maintained her course, refusing to halt. At dawn the following morning, again with the concurrence of the District Commander, Kidd made one final effort with warning shots, then commenced disabling fire directed at Ranger's stern. After eighteen rounds of disabling fire, Ranger stopped, was boarded, seized and her crew arrested. Later the ship and her crew were transferred to custody of a Coast Guard buoy tender off San Juan, Puerto Rico.³¹

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CHAPTER IV

CONCLUSION

There is no doubt that the Navy is strongly and directly committed to supporting the Coast Guard in its (the Coast Guard's) law enforcement mission. The recent changes to the Posse Comitatus Act combined with previous Navy guidance appear to have cleared away any of the legal barriers which might have previously prevented such involvement.

Since most of this mandated support is clear and straightforward and does not directly involve Navy units in active participation in law enforcement (logistics support, surveillance, towing/escort of seized vessels and arrested crewmembers) it should represent no problem to the Navy officer involved. A ship with a TACLET on board, however, does place additional burden on the ship's commanding officer and crew. Generally such a ship can depend on the advice and guidance of the Coast Guard personnel with respect to the proper conduct of law enforcement operations. Nonetheless the following general guidelines apply:

1. The Navy ship will change its tactical control to that of the appropriate Coast Guard District Commander should a law enforcement situation develop.

2. If a United States flag vessel is involved there is no question of the authority of the Coast Guard boarding officer to stop the vessel and conduct an examination/inspection of the vessel anywhere on the high seas.

3. If a foreign flag vessel is encountered it is unlikely that the Navy ship will be used to effect the boarding and any subsequent law enforcement action. However if such a situation develops the Navy ship will comply strictly with the instructions provided by the Coast Guard District Commander.

4. If a stateless vessel is involved the determination of statelessness must be carefully and correctly made; one needs to keep in mind that statelessness is not so much proven as nationalities are disproven. Only solid, convincing evidence that a vessel is stateless warrants boarding by a Coast Guard law enforcement party with the concurrence (statement of no objection) from the Commandant of the Coast Guard via the appropriate District Commander.

5. Use of force is always escalatory and graduated in nature; every effort must be made to have a vessel comply with instructions short of using any force. When force is applied, it must be a graduated response: demonstration of weapons, use of less-than-deadly force, firing of warning shots, disabling fire. Finally the commanding officer must keep in mind that any and all employment of weapons (warning shots, disabling fire) must be approved by the Coast Guard District Commander prior to such use and prior to any escalation.

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commercial sources or to be transferred to each such Selected Reserve from the active-duty components of the armed forces, and

"(D) the quantity of each type of major item of equipment which is expected to be retired, decommissioned, transferred, or otherwise removed from the physical inventory of the Selected Reserve of the Ready Reserve of each reserve component and the plans for replacement of that equipment.

The report required by this paragraph shall be prepared and expressed in the same format and with the same level of detail as the information presented in the annual Five Year Defense Program Procurement Annex prepared by the Department of Defense."

DEFERRAL OF PERSONNEL END-STRENGTH LIMITATIONS DURING A NATIONAL EMERGENCY

Sec. 903 Section 134(c) of title 10, United States Code, is amended by adding at the end thereof the following new paragraph:

"(4) If at the end of any fiscal year there is in effect a war or national emergency, the President may defer the effectiveness of any end-strength limitation with respect to that fiscal year prescribed by law for any military or civilian component of the armed forces or of the Department of Defense. Any such deferral may not extend beyond November 30 of the following fiscal year. The President shall promptly notify Congress of any deferral of an end-strength limitation under this paragraph."

PROHIBITION OF CERTAIN CIVILIAN PERSONNEL MANAGEMENT CONSTRAINTS

Sec. 904 (a) Chapter 4 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 1406. Prohibition of certain civilian personnel management constraints

"The civilian personnel of the Department of Defense shall be managed each fiscal year solely on the basis of and consistent with (1) the workload required to carry out the functions and activities of the department, (2) the funds made available to the department for such fiscal year, and (3) the authorized end strength for the civilian personnel of the department for such fiscal year. The management of such personnel in any fiscal year shall not be subject to any man-year constraint or limitation."

(b) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"1406 Prohibition of certain civilian personnel management constraints."

AUTHORIZATION OF MILITARY COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS

Sec. 905 (a)(1) Part I of subtitle A of title 10, United States Code, is amended by adding after chapter 17 the following new chapter:

"CHAPTER 18—MILITARY COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS

"§ 171. Use of information collected during military operations.

- "§ 372. Use of military equipment and facilities.
- "§ 373. Training and advising civilian law enforcement officials.
- "§ 374. Assistance by Department of Defense personnel.
- "§ 375. Assistance in direct participation by military personnel.
- "§ 376. Assistance not to affect adversely military preparedness.
- "§ 377. Recombination.
- "§ 378. Nonpresumption of other law.

"§ 371. Use of information collected during military operations

"The Secretary of Defense may, in accordance with other applicable law, provide to Federal, State, or local civilian law enforcement officials any information collected during the normal course of military operations that may be relevant to a violation of any Federal or State law within the jurisdiction of such officials.

"§ 372. Use of military equipment and facilities

"The Secretary of Defense may, in accordance with other applicable law, make available any equipment, base facility, or research facility of the Army, Navy, Air Force, or Marine Corps to any Federal, State, or local civilian law enforcement official for law enforcement purposes.

"§ 373. Training and advising civilian law enforcement officials

"The Secretary of Defense may assign members of the Army, Navy, Air Force, and Marine Corps to train Federal, State, and local civilian law enforcement officials in the operation and maintenance of equipment made available under section 372 of this title and to provide expert advice relevant to the purposes of this chapter.

"§ 374. Assistance by Department of Defense personnel

"(a) Subject to subsection (b), the Secretary of Defense, upon request from the head of an agency with jurisdiction to enforce—

"(1) the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

"(2) any of sections 274 through 278 of the Immigration and Nationality Act (8 U.S.C. 1324–1328); or

"(3) a law relating to the arrival or departure of merchandise (as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401)) into or out of the customs territory of the United States (as defined in general headline 2 of the Tariff Schedules of the United States (19 U.S.C. 1202)) or any other territory or possession of the United States,

may assign personnel of the Department of Defense to operate and maintain or assist in operating and maintaining equipment made available under section 372 of this title with respect to any criminal violation of any such provision of law.

"(b) Except as provided in subsection (c), equipment made available under section 372 of this title may be operated by or with the assistance of personnel assigned under subsection (a) only to the extent the equipment is used for monitoring and communicating the movement of air and sea traffic.

"(c)(1) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used outside the land area of the United States (or any territory or possession of the United States) as a base of operations by Federal law enforcement officials to facilitate the enforcement of a law listed in subsection (a) and to transport such law enforcement officials in connection with such operations, if—

"(A) equipment operated by or with the assistance of personnel assigned under subsection (a) is not used to interdict or to interrupt the passage of vessels or aircraft, and

"(B) the Secretary of Defense and the Attorney General jointly determine that an emergency circumstance exists.

"(2) For purposes of this subsection, an emergency circumstance may be determined to exist only when—

"(A) the size or scope of the suspected criminal activity in a given situation poses a serious threat to the interests of the United States; and

"(B) enforcement of a law listed in subsection (a) would be seriously impaired if the assistance described in this subsection were not provided.

§ 375. Restriction on direct participation by military personnel

"The Secretary of Defense shall issue such regulations as may be necessary to insure that the provision of any assistance (including the provision of any equipment or facility or the assignment of any personnel) to any civilian law enforcement official under this chapter does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in an interdiction of a vessel or aircraft, a search and seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.

§ 376. Assistance not to affect adversely military preparedness

"Assistance (including the provision of any equipment or facility or the assignment of any personnel) may not be provided to any civilian law enforcement official under this chapter if the provision of such assistance will adversely affect the military preparedness of the United States. The Secretary of Defense shall issue such regulations as may be necessary to insure that the provision of any such assistance does not adversely affect the military preparedness of the United States.

§ 377. Reimbursement

"The Secretary of Defense shall issue regulations providing that reimbursement may be a condition of assistance to a civilian law enforcement official under this chapter.

§ 378. Nonpreemption of other law

"Nothing in this chapter shall be construed to limit the authority of the executive branch in the use of military personnel or equipment for civilian law enforcement purposes beyond that provided by law prior to the enactment of this chapter."

"(2) The tables of chapters at the beginning of subtitle A of such title and at the beginning of part I of subtitle A of such title are amended by adding after the item relating to chapter 17 the following new item:

"18 Military Cooperation With Civilian Law Enforcement Officials

371"

(b) Not later than 30 days after the end of the 180-day period beginning on the date of the enactment of this Act, the Secretary of Defense shall submit a comprehensive report to Congress on the operation through the end of such period of chapter 18 of title 10, United States Code (as added by subsection (a)). Such report shall include findings of the Secretary concerning the effect of assistance provided under such chapter.

DETERMINATION OF CHARGES FOR CHAMPUS PAYMENTS

Sec. 906. (a)(1) Subsection (b) of section 1079 of title 10, United States Code, is amended to read as follows:

"(b)(1) Payment for a charge for services by an individual health-care professional (or other noninstitutional health-care provider) for which a claim is submitted under a plan contracted for under subsection (a) may be denied only to the extent that the charge exceeds the amount equivalent to the 90th percentile of billed charges made for similar services in the same locality during the base period.

"(2) For the purposes of paragraph (1), the 90th percentile of charges shall be determined by the Secretary of Defense, in consultation with the Secretary of Health and Human Services, and the base period shall be a period of twelve calendar months. The base period shall be adjusted at least once a year."

"(2) Section 1086(f) of such title is amended by striking out "physician services" and inserting in lieu thereof "services by an individual health-care professional (or other noninstitutional health-care provider)".

(b) The amendments made by subsection (a) shall apply with respect to claims submitted for payment for services provided after the end of the 30-day period beginning on the date of the enactment of this Act.

Effective date
to USC 1079
note

INCREASES IN DOLLAR THRESHOLDS FOR CERTAIN DEFENSE CONTRACT REGULATIONS

Sec. 907. (a) Sections 2304(a)(3) and 2304(g) of title 10, United States Code, are amended by striking out "\$10,000" and inserting in lieu thereof "\$25,000".

(b) Section 2306(a)(1) of such title is amended by striking out "\$100,000" such place it appears and inserting in lieu thereof "\$500,000".

(c) Section 2311 of such title is amended by striking out "\$100,000" and inserting in lieu thereof "\$5,000,000".

22

PROCUREMENT OF AUTOMATIC DATA PROCESSING EQUIPMENT

Sec. 908. (a)(1) Chapter 137 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 2315. Law inapplicable to the procurement of automatic data processing equipment and services for certain defense purposes

10 USC 2315

"(a) Section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 755) is not applicable to the procurement by the Department of Defense of automatic data processing equipment or services if the function, operation, or use of the equipment or services—

"(1) involves intelligence activities;

"(2) involves cryptologic activities related to national security;

"(3) involves the command and control of military forces;

"(4) involves equipment that is an integral part of a weapon or weapons system; or

"(5) subject to subsection (b), is critical to the direct fulfillment of military or intelligence missions.

40 USC 755



THE SECRETARY OF THE NAVY
WASHINGTON, D. C. 20350

OP-642

29 July 1982

MEMORANDUM FOR THE SECRETARY OF DEFENSE

Subj: U.S. Navy Support to the U.S. Coast Guard in Drug
Interdiction Activities - ACTION MEMORANDUM

Ref: (a) Secretary of Transportation letter of 2 April
1982 to SECDEF
(b) SECNAVINST 5820.7 of 15 May 1982, Subj: "Posse
Comitatus Act"
(c) DoD Directive 5525.5 of 22 March 1982, Subj:
"DoD Cooperation with Civilian Law Enforcement
Officials"

Encl: (1) CINCLANTFLT OPORD 2120
(2) Executive Summary - Proposed OPORD 2120
(3) Proposed Reply

In reference (a) the Secretary of Transportation requested that the U.S. Navy assist the U.S. Coast Guard in drug interdiction operations. He advised that there are inadequate civilian resources to respond to the surge of vessels trafficking in drugs and other contraband en route to the United States from the Caribbean and other regions, and stated that the inability to interdict this massive influx of drugs is detrimental to the national interest of the United States. Enclosure (1) is a proposed plan for extending Navy assistance to the Coast Guard in drug interdiction activities until such time as civilian law enforcement capabilities become adequate to meet the threat posed by drug smugglers.

Enclosure (1) includes provisions for:

a. Air and surface surveillance operations (Annex E).

b. Embarkation of Coast Guard detachments on U.S. Navy vessels for law enforcement boardings of U.S. flag and stateless vessels (Annexes C and E). Tactical control of Navy vessels will shift to the Coast Guard prior to any interdiction. Detailed guidance is provided to govern the use of force, including warning shots, disabling fire, and deadly force, in support of law enforcement operations (Appendix 1 to Annex C).

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c. Towing/escorting of seized vessels and transportation of arrested persons in Coast Guard custody (Annexes C, E, and N). Navy personnel are authorized to assist Coast Guard personnel in guarding and controlling arrested persons. Ship's brigs may be used when Navy prisoners are not incarcerated. Temporary custody of seized vessels/prisoners at U.S. Naval Base, Guantanamo Bay, Cuba, while awaiting onward movement to CONUS, is authorized.

d. Logistic support to Coast Guard forces (Annex D). Logistic support will encompass the following areas: fuel, provisions, repairs, medical, and squadron support. Squadron support entails the dedication of Navy vessels as platforms for command and control support for embarked Coast Guard personnel, communications, relief crew facilities, helicopter operations, and logistic support for 2-4 Coast Guard patrol vessels.

Enclosure (2) is an executive summary of OPORD 2120.

Reference (b) adopts for the Navy, as a matter of policy, the restrictions of the Posse Comitatus Act, 18 U.S.C. 1385 (1976), and authorizes exceptions to this policy when specific approval of the Secretary of the Navy is granted. To the extent that enclosure (1) authorizes activities otherwise prohibited as a matter of policy by reference (b), I specifically approve the rendering of such assistance to the Coast Guard in support of drug interdiction operations. I will review, on an annual basis, the need and advisability of continued Navy assistance in drug interdiction operations.

Reference (c) requires your prior approval before certain aspects of the assistance outlined in enclosure (1) may be provided. I respectfully request that you approve Navy assistance to the Coast Guard in support of drug interdiction activities as set forth in enclosure (1). If you concur, your signature on enclosure (3) will signify your approval.

It is understood that approval of this request will supersede my memorandum of 4 May 1982, Subj: U.S. Navy Support to the U.S. Coast Guard in Drug Interdiction Activities, and your memorandum dated 24 May 1982, same subject.


JOHN LEHMAN

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9 AUG 1982

MEMORANDUM FOR THE SECRETARY OF THE NAVY

SUBJECT: U.S. Navy Support to the U.S. Coast Guard in Drug Interdiction Activities

Your memorandum of 29 July 1982, requested approval of U.S. Navy support to the U.S. Coast Guard, to include:

- (a) Air and surface surveillance operations;
- (b) Embarkation of U.S. Coast Guard detachments on U.S. Navy vessels for law enforcement boardings of U.S. flag and stateless vessels;
- (c) Towing/escorting of seized vessels and transportation of arrested persons in U.S. Coast Guard custody; and
- (d) Logistic support to U.S. Coast Guard forces.

In accordance with the requirements of DoD Directive 5525.5, "DoD Cooperation with Civilian Law Enforcement Officials," I hereby approve the rendering of U.S. Navy assistance to the U.S. Coast Guard in support of drug interdiction activities, as outlined in your memorandum of 29 July 1982, and as specifically delineated in enclosure (1) thereto.

Joseph W. Entenza

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OFFICE OF THE
SECRETARY OF
THE NAVY

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March 22, 1982
NUMBER 5525.5

Department of Defense Directive

(MRA&L)

SUBJECT: DoD Cooperation with Civilian Law Enforcement Officials

References: (a) through (hh), see enclosure 1.

A. PURPOSE

This Directive establishes uniform DoD policies and procedures to be followed with respect to support provided to federal, state, and local civilian law enforcement efforts.

B. APPLICABILITY AND SCOPE

This Directive applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components"). The term, "Military Service," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

C. DEFINITIONS

1. Civilian agency. A government agency (other than the Department of Defense) in the following jurisdictions:

- a. The United States.
- b. A State (or political subdivision thereof).
- c. A territory or possession of the United States.

2. Civilian law enforcement official. An officer or employee of a civilian agency with responsibility for enforcement of the laws within the jurisdiction of the agency.

3. DoD intelligence component. An organization listed in subsection C.4. of DoD Directive 5240.1 (reference (a)).

D. POLICY

It is the policy of the Department of Defense to cooperate with civilian law enforcement officials to

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the maximum extent practicable. Under enclosures 2 through 5 to this Directive, the implementation of this policy is consistent with the needs of national security and military preparedness, the historic tradition of limiting direct military involvement in civilian law enforcement activities, and the requirements of applicable law.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) (ASD(MRA&L)) shall:

a. Coordinate with civilian agencies on long-range policies to further DoD cooperation with civilian law enforcement officials.

b. Provide information to civilian agencies to facilitate their access to DoD resources, including surplus equipment.

c. Coordinate with the Department of Justice, the U.S. Coast Guard, and the U.S. Customs Service on matters related to the interdiction of the flow of illegal drugs into the United States.

d. Develop guidance and approve actions as specified in enclosures 2 through 5 to this Directive taking into account the requirements of DoD intelligence components and the interests of the Assistant Secretary of Defense (Health Affairs) (ASD(HA)).

e. Disseminate promptly interim guidance to permit the approving authorities designated in enclosures 2 through 5 to this Directive to grant requests for assistance before the issuance of implementing documents.

f. Ensure that the responsibilities addressed in paragraphs a. through e. are conducted in a manner that is consistent with the needs of national security and military preparedness.

2. Heads of DoD Components shall:

a. Disseminate promptly the text of 10 U.S.C. §§371-378 (reference (b)), along with the interim guidance issued by the ASD(MRA&L) under paragraph E.1.e., above, to ensure that field elements implement promptly congressional and departmental policy.

b. Review training and operational programs to determine how assistance can be provided to civilian law enforcement officials, consistent with the policy in section D., above, with a view towards identification of programs in which reimbursement can be waived under enclosure 5 of this Directive.

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c. Issue implementing documents incorporating the guidelines and procedures set forth in this Directive to include the following:

(1) Implementation of procedures for prompt transfer of law enforcement information.

(2) Establishment of local contact points in subordinate commands for purposes of coordination with civilian law enforcement officials.

(3) Issuance of guidelines for evaluating requests for assistance in terms of impact on national security and military preparedness.

4. The Director, National Security Agency (NSA)/ Chief, Central Security Service (CSS) shall establish appropriate guidance for NSA/CSS.

5. The Joint Chiefs of Staff shall:

a. Assist the ASD(MRA&L) in development of guidance for use by DoD Components in evaluating the impact of requests for assistance on national security and military preparedness.

b. Advise the Secretary of Defense and the ASD(MRA&L) on the impact on national security and military preparedness of specific requests for assistance when such officials act as approving authorities.

c. Advise approving authorities of the impact on national security and military preparedness of specific requests involving personnel assigned to a Unified or Specified Command.

G. INFORMATION REQUIREMENTS

A quarterly report of all requests for assistance (approved, denied, or pending) shall be submitted by the heads of DoD Components to the ASD(MRA&L), the ASD(HA), and the General Counsel, DoD, showing action taken (approval, denial, or pending), and other appropriate information. The format of such report shall be prescribed by the ASD(MRA&L) and will be prepared in accordance with DoD Directive 5000.11 (reference (c)). This information requirement has been assigned Report Control Symbol DD-M(Q) 1595. Actions involving the use of classified means or techniques may be exempted from such report with the concurrence of the ASD(MRA&L).

H. RELEASE OF INFORMATION

1. Release of information to the public concerning law enforcement operations is the primary responsibility of the civilian agency that is performing the law enforcement function.

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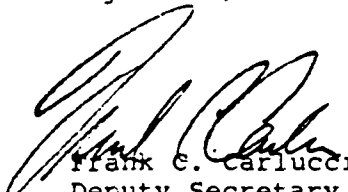
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DoD Components may release such information, however, when approved under the procedures established by the head of the DoD Component concerned.

2. When a DoD Component provides assistance under this Directive, it may condition the provision of such assistance upon control by the DoD Component of the release of information to the public concerning such assistance.

I. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward two copies of implementing documents to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) within 120 days.


Frank C. Carlucci
Deputy Secretary of Defense

Enclosures - 5

1. References
2. Use of Information Collected during Military Operations
3. Use of Military Equipment and Facilities
4. Restrictions on Participation of DoD Personnel in Civilian Law Enforcement Activities
5. Funding

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1. Lawrence M. Friedman, A History of American Law (New York: Simon and Schuster, 1973), p. 295.
2. Foster Rhea Dulles, The United States Since 1865 (Ann Arbor, Michigan: University of Michigan Press, 1969), p. 21.
3. Ibid., p. 26.
4. E. Benjamin Andrews, The United States In Our Own Time (New York: Charles Scribners Sons, 1903), p. 145-6.
5. Ibid., p. 305.
6. Ibid., p. 225.
7. Stanley P. Hirshon, Farewell to the Bloody Shirt (Chicago: Quadrangle Books, 1968), p. 57.
8. Memorandum from James J. McHugh, RADM, JAGC, USN, to Director, Strategy, Plans and Policy Division, Office of the CNO, 30 March 1982, p. 2.
9. Memorandum Opinion of Gilberto Gierbolini in United States District Court for the District of Puerto Rico, 13 January 1983, p. 4.
10. "The Coast Guard; Still Seaworthy?", Naval Institute Proceedings, October 1980.
11. U.S. Laws, Statutes, etc., "Military Appropriations Authorization Act of 1982", United States Statutes at Large, Public Law 97-86, (U.S. Government Printing Office, 1982). p. 17.
12. James J. McHugh, p. 3.
13. Memorandum from John H. Lehman to Caspar W. Weinberger, 29 July 1982, p. 1.
14. Memorandum from Caspar W. Weinberger to John H. Lehman, 9 August 1982, p. 1.
15. Commander in Chief, Atlantic Fleet, CINCLANTFLT OPOD 2120, 23 June 1982, p/ 25.
16. Telephone Conversation with Commander Dave Russel, USCG, Office of Intelligence and Law Enforcement, Seventh Coast Guard District, Miami, 12 December 1983.

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17. Caspar W. Weinberger, p.1.
18. H. Meyers, The Nationality of Ships (The Hague, Netherlands: Martinus Nijhoff, 1967), p. 83.
19. Ibid., p. 319.
20. Ibid., p. 319.
21. John Kish, The Law of International Spaces (The Hague, Netherlands: A.W. Sijthoff, 1973), p. 101.
22. U.S. Coast Guard, Policy and Guidance for the Enforcement of Laws and Treaties Program, COMDINST 16200.1A (Washington: 1 June 1983), p. 6.
23. H. Meyers, p. 322.
24. Ibid., p. 320.
25. Gilberto Gierbolini, p. 3.
26. H. Meyers, p. 20.
27. Command in Chief, Atlantic Fleet, p. 6.
28. U.S. Coast Guard, Use of Force and Weapons Policy, COMDINST 16243.1A (Washington; 27 July 1979), p. 3.
29. Ibid., p. 5.
30. Ibid., p. 2.
31. "I Was Witnessing a Chapter in Coast Guard History," Commandant's Bulletin, 30 September 1983, p. 20-21.
32. COMDINST 16200.1A, p. 5.

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